

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

State of West Virginia
ex rel ROB CORNELIUS,
and ROB CORNELIUS, Individually,

Petitioner/Plaintiff

v.

Civil Action No.: _____
Judge: _____

MAC WARNER,
SECRETARY OF STATE OF THE
STATE OF WEST VIRGINIA,
in his Official Capacity,

Respondent/Defendant,

and

MELODY POTTER, in her capacity as
Chairman of the West Virginia
State Executive Committee

Respondent.

**VERIFIED PETITION FOR
WRIT OF MANDAMUS,**

AND

**COMPLAINT FOR
DECLARATORY JUDGMENT**

INTRODUCTION

State of West Virginia ex rel Rob Cornelius, and Rob Cornelius, Individually, (collectively "Petitioner") files this verified petition for writ of mandamus and complaint for declaratory judgment regarding his duly elected position as Chairman of the Wood County Republican Executive Committee. Petitioner seeks a writ of mandamus pursuant to West Virginia Code §3-1-45 directing the West Virginia Secretary of State to disregard and not post the roster submitted by Chairwoman of the West Virginia Republican Executive Committee Melody Potter, which was

submitted in violation of West Virginia Code §3-1-9(g), and to accept and post the roster for the Wood County Republican Executive Committee submitted on June 21, 2019 and July 31, 2019 by Petitioner in his capacity as Chairman of the Wood County Republican Executive Committee. Petitioner further seeks declaratory judgment, as set forth below, regarding Petitioner's rights to serve elected office pursuant to West Virginia Code §3-1-9, the Wood County Republican Executive Committee By-Laws and the violations of such law by defendants Warner and Potter.

I. JURISDICTION

1. Jurisdiction and venue are proper in the Circuit Court of Kanawha County pursuant to West Virginia Code §3-1-45 and W.Va. Code §55-13-1 et. seq.

II. PETITIONER AND RESPONDENT/DEFENDANTS

2. Petitioner Rob Cornelius, was duly elected on May 8, 2018 on the West Virginia Republican Primary Ballot by voters in Wood County District A-5, two precincts in Parkersburg to represent them on the Wood County Republican Executive Committee. On July 17, 2018, the duly elected members of the Wood County Republican Executive Committee unanimously elected Rob Cornelius to serve a full four-year term as Chairman of the body. Petitioner brings this action as a relator seeking mandamus and as a declaratory judgment plaintiff.

3. Respondent/Defendant Mac Warner is the West Virginia Secretary of State and serves as the Chief Elections Officer of West Virginia and oversees the election process through the state along with the recording of official campaign financial records and candidate filings. Part of his duties include maintaining a website with certain county information. W. Va. Code §5-2-4(a). West Virginia Code §3-1-9(g) provides that "a current listing of all executive committee's members shall be filed with the Secretary of State by the end of July each year." The Secretary of

State is required to perform his duties consistent with the West Virginia Code and subject to the West Virginia Constitution.

4. Defendant Melody Potter is the Chairman of the West Virginia Republican State Executive Committee.

III. FACTUAL BACKGROUND

5. On May 8, 2018, Petitioner Rob Cornelius was duly elected by the voters in Wood County District A-5 to represent them on the Wood County Republican Executive Committee ("WCREC").

6. On July 17, 2018, the duly elected members of the WCREC held an organizational meeting in Parkersburg, West Virginia and unanimously elected Petitioner Rob Cornelius to serve a full four-year term as Chairman.

7. The WCREC By-Laws provide that: "The term of all officers shall begin on the date of their election to such office and shall continue until the first day of July of the fourth year thereafter following the May primaries, and until their successors are elected." *See* WCREC By-Laws, attached as Exhibit 1.

8. On June 18, 2019, West Virginia Republican State Executive Committee ("WVRSEC") Chairwoman, Respondent Melody Potter notified Respondent Mac Warner, the Secretary of State, that Petitioner was "removed as chairman and member of the Wood County Republican Executive Committee effective 6/18/2019, per our state party bylaws."

9. The notice was accompanied by a new roster for the WCREC and Certificates of Appointment filled out by Ms. Potter, naming six new members to the body on or about June 20th. On the morning of June 21st, Ms. Potter emailed the WVSOS and claimed that she had named

Roger Conley, one of her new appointees, to serve as "Acting Chairman" of the Wood County Republican Committee.

10. On June 21, 2019, Petitioner, submitted to the WVSOS an updated roster for the WCREC, reflecting the correct current status of the body and the unrelated resignation of John Sines of Washington, W.Va. because of a recent appointment to the State Parole Board.

11. On June 24, 2019, WVSOS Counsel Donald Kersey, requested Chairwoman Potter make clarification of any statute she claimed empowered her to remove Petitioner from any office to which he had been elected, stating:

[i]n this unique instance, it is unclear what authority this Office must rely upon to publically[sic] publish online the updated roster you submitted.

Therefore, I respectfully request that you provide additional information regarding the roster you submitted for appointments made to the Wood County Republican Executive Committee. Specifically, according to W.Va. Code § 3-1-9-(g) only the *chair* of the county executive committee has the authority to fill vacancies and submit updated rosters to our Office for publication to the public.

If you, as the Chairperson of the Republican State Executive Committee, relied on the authority in your bylaws to assume the role of the Chair of the Wood County Republican Executive Committee, please indicate as much as writing to the undersigned ... Otherwise, please provide the statutory authority you relied upon that allows our Office to legally accept the updated roster you submitted. As the letter details, this request is only in regard to this Office's authority to accept vacancy appointments and updated rosters submitted by county chairs under W. Va. Code § 3-1-9(g). This letter shall not be regarded as a determination of the legality or propriety of the decisions made by you as State Party Chairman under your party's bylaws, which is beyond this Office's purview. I am merely seeking clarification of this Office's statutory authority to publish your updated roster online, which reflects the vacancies that you filled.

See June 24, 2019 letter from Donald Kersey, attached as Exhibit 2.

12. On June 26, 2019, Chairwoman Potter responded to WVSOS Counsel Donald Kersey and cited no statutory authority in support of her removal and replacement of the duly elected Petitioner but merely claimed that the Republican Party By-Laws were sufficient to justify her actions. *See* June 24, 2019 letter of Melody Potter, attached as Exhibit 3.

13. In his June 26, 2019 response, WVSOS Counsel Donald Kersey stated that the office of Secretary of State was “without jurisdiction to determine the procedural propriety of an updated roster submitted by you in your asserted authority as Chairman of the Republican State Executive Committee.”

14. With the decision by the WVSOS Counsel to act in a purely ministerial capacity, that office asserted that it is unable to discern the legality or acceptability of any such submission of a membership roster, and published the roster and new members appointed by an officer of another political body, rather than the elected head of the Wood County Republican Executive Committee or any officer or member thereof.

15. Subsequently, Petitioner appealed the decision via certified letter to the WVREC. *See* June 26, 2019 letter from Petitioner, attached as Exhibit 4.

16. On July 10, 2019, Chairman Potter unilaterally denied Petitioner’s appeal. *See* July 10, 2019 letter of Chairman Potter, attached as Exhibit 5.

17. In accordance with West Virginia Code §55-17-3, Petitioner provided 30-day written notice of pending lawsuit or claim against the State of West Virginia to Counsel for WVSOS and Chairman Potter of the intent to seek a Writ of Prohibition to preclude the WVSOS from posting and honoring any roster appointments of new members to the WCREC submitted by Chairman Potter, who was not the current Chairman of that body and to seek a Writ of Mandamus Ordering the WVSOS to post the rosters for the WCREC submitted by Petitioner on June 21, 2019 and again on July 31, 2019. *See* June 21, 2019 and July 31, 2019 letters from Petitioner, attached as Exhibits 6 and 7.

COUNT I – WRIT OF MANDAMUS
(Against Secretary of State Mac Warner)

18. Petitioner hereby incorporates by reference each and every prior paragraph of this Petition as if fully set forth herein.

19. West Virginia Code §3-1-45 provides that “any officer or person upon whom any duty is imposed by this chapter may be compelled to perform his or her duty by writ of mandamus” and that the circuit courts shall have jurisdiction by writ.

20. West Virginia Code §3-1-3A provides that the Secretary of State shall have the authority to make, amend and rescind such rules, regulations, orders and instructions, and prescribe such registration and voting procedures, forms ..., lists and records, as may be necessary”

21. W.Va. Code §3-1-9(g) provides that only the chair of the county executive committee has the authority to fill vacancies and submit updated rosters to the Secretary of State’s Office for publication to the public.

22. Chairman Potter’s attempted removal of Petitioner was in violation of his rights including his state constitutional right to serve the office he was elected to, his right not to be removed from that office without complying with principles of due process, and his right not to be removed from a county office absent compliance with West Virginia Code § 6-6-7. As such, Petitioner’s attempted removal by Chairman Potter was ineffective and should not have been recognized by Respondent Warner.

23. As the duly elected Chairman of the WCREC, Petitioner submitted rosters for the WCREC on June 21, 2019 and again on July 31, 2019.

24. The West Virginia Secretary of State should be compelled to accept and publish the roster submitted by Petitioner.

COUNT II – DECLARATORY JUDGMENT
(Against all Defendants)

25. Petitioner hereby incorporates by reference each and every prior paragraph of this Petition as if fully set forth herein.

26. W.Va. Code §3-1-9(g) provides that only the chair of the county executive committee has the authority to fill vacancies and submit updated rosters to the Secretary of State's Office for publication to the public.

27. Melody Potter, in her acting capacity as Chairwoman of the WVREC violated W.Va. Code §3-1-9 by removing Petitioner from his duly elected position as WCREC and Chairman of the body.

28. There is no procedure articulated for removal of an officer in the WCREC By-Laws. Art. VIII of the WCREC By-Laws provides that in matters not specified in the By-Laws that the latest edition of Robert's Rules of Order will define the procedure of the WCREC provided it is consistent with the By-Laws and the West Virginia Code.

29. Robert's Rules of Order, 11th edition is the latest edition of that publication. Robert's Rules §§ 62 and 63 define the process for "Removal from Office . . ." as "an officer can be removed from office only for cause – that is, neglect or duty in office or misconduct – in accordance with the procedures in 63, that is, an investigating committee must be appointed, charges must be preferred, and a formal trial must be held." Robert's Rules §62 at p. 654.

30. Robert's Rules establishes the following five steps for a "Fair Disciplinary Process": (1) confidential investigation by a committee; (2) report of the committee, and preferral of charges if warranted; (3) formal notification of the accused; (4) trial; and (5) the assembly's review of a trial committee's findings (if the trial has been held in a committee instead of the assembly of the society)." *Id.* at §63, p. 656 lines 18-32.

31. Chairman Potter did not comply with the WCREC By-Laws or Robert's Rules of Order in her inappropriate ousting of Petitioner from his duly elected office. There was no investigating committee appointed, no charges brought and no formal trial held.

32. Petitioner was denied his right to a fair disciplinary process as set forth under Robert's Rules of Order.

33. Alternatively, West Virginia Code § 6-6-7 provides the manner of removal of elected county officials. None of the procedures set forth in this provision were followed in connection with Petitioner's attempted removal.

34. West Virginia Code §3-1-11 provides that the state executive committee may "make such rules for the government of such party, not inconsistent with law" and that all acts of such state committees "may be reviewable by the courts."

35. The West Virginia Secretary of State's office has improperly concluded that it was without jurisdiction to consider the procedural propriety of an updated roster submitted by the Chairwoman of the Republican State Executive Committee.

36. Based on this justiciable controversy, Petitioner seeks a declaration pursuant to the West Virginia Uniform Declaratory Judgments Act, W.Va. Code §55-13-1 et. seq., and West Virginia Rules of Civil Procedure 57, 38, and 39, and that this Court declare the following:

- a. Chairwoman Potter's reliance on the WVREC By-Laws to remove Petitioner from his duly elected positions are in violation of West Virginia Code §3-1-9(b).
- b. Chairwoman Potter's reliance on the WVREC By-Laws to remove Petitioner from his duly elected positions and submit a roster to the Secretary of State with vacancy appointments are in violation of West Virginia Code §3-1-9(g).

- c. Chairwoman Potter violated the WCREC By-Laws and Roberts Rules of Order in her removal of Petitioner from his duly elected office and violated Petitioner's right to a fair disciplinary process.
- d. The actions of Melody Potter in her capacity as Chairwoman of the WVREC in regard to the removal of Petitioner from his duly elected position as WCREC and Chairman of the body violated Petitioner's Due Process Rights under the West Virginia Constitution.
- e. Chairwoman Potter's actions further violated Petitioner's fundamental right to be a candidate and to serve the office for which he was elected.
- f. Chairwoman Potter's actions violated the rights of the Wood County District A-5 voters to elect their representative on the WCREC.
- g. Chairwoman Potter's actions violated the bylaws of the WCREC in regard to the election of the Chairman of the body.
- h. That Petitioner be restored to his duly elected position on the WCREC.
- i. That the rosters for the WCREC submitted by Petitioner on June 21, 2019 and July 31, 2019 are the true and correct rosters.

37. Petitioner is an appropriate party to maintain a declaratory judgment action pursuant to W. Va. Code §55-13-2.

38. The West Virginia Uniform Declaratory Judgment Act is remedial in nature and should be liberally construed and administered to fulfill its purpose of settling and affording relief from uncertainty and insecurity with respect to rights, status and other legal relations. W. Va. Code §55-13-2.

39. The issuance of declaratory relief by this Court will assist the parties in resolving the underlying controversy.

V. PRAYER FOR RELIEF

Petitioner pray for the following relief:

- a. This Court grant a rule to show cause, enter an expedited briefing schedule, and after due consideration, grant Petitioner a Writ of Mandamus directing the West Virginia Secretary of State to disregard the roster submitted by Chairwoman Potter and to post the roster for the Wood County Republican Executive Committee submitted on June 21, 2019 and July 31, 2019 by Petitioner in his capacity as Chairman of the Wood County Republican Executive Committee.
- b. Declaratory Judgement under the Declaratory Judgments Act declaring the duties, rights and obligations of the parties under West Virginia Code §3-1-9 and West Virginia Code §3-1-11, including, but not limited to the following:
 1. that Chairwoman Potter's reliance on the WVREC By-Laws to remove Petitioner from his duly elected positions are in violation of West Virginia Code §3-1-9(b);
 2. that Chairwoman Potter's reliance on the WVREC By-Laws to remove Petitioner from his duly elected positions are in violation of West Virginia Code §3-1-9(g);
 3. that Chairwoman Potter violated the WCREC By-Laws and Roberts Rules of Order in her removal of Petitioner from his duly elected office and violated Petitioner's right to a fair disciplinary process.
 4. that the actions of Melody Potter in her capacity as Chairwoman of the WVREC in regard to the removal of Petitioner from his duly elected position as WCREC and Chairman of the body violated Petitioner's Due Process Rights under the West Virginia Constitution;
 5. that Chairwoman Potter's actions further violated Petitioner's fundamental right to be a candidate and to serve the office for which he was elected;
 6. that Chairwoman Potter's actions violated the rights of the Wood County District A-5 voters to elect their representative on the WCREC;
 7. that Chairwoman Potter's actions violated the bylaws of the WCREC in regard to the election of the Chairman of the body.
 8. that Petitioner be restored to his duly elected position on the WCREC.

9. that the rosters for the WCREC submitted by Petitioner on June 21, 2019 and July 31, 2019 are the true and correct rosters.

- c. Reasonable attorneys' fees and the costs of this action;
- d. All other relief the Court deems appropriate.

State of West Virginia ex rel.
Rob Cornelius, and
Rob Cornelius, Individually,

By counsel,

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VERIFICATION OF PETITION

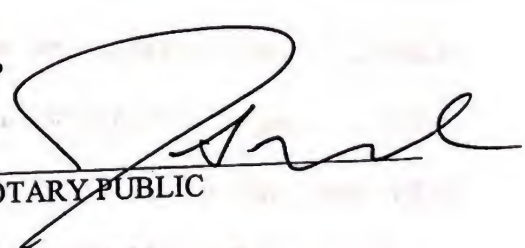
Pursuant to W.Va. Code § 53-1-3, Petitioner verifies that (1) he has read the Motion and that to the best of his knowledge, information and belief formed after reasonable inquiry that it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification or reversal of existing law; and (2) that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.


Rob Cornelius

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA,

The foregoing was taken, subscribed and sworn to before me this 20th day of August,
2019.

My commission expires: 03-02-2023


NOTARY PUBLIC

